country.[16] The Commission also requests comments on whether it should permit a private line reseller that received an initial Section 214 certificate to serve additional countries without prior certification, or even notification to the Commission, where the Commission has found that those countries afford equivalent resale opportunities to U.S. carriers. Id. at ¶ 79.

MCI agrees that the Commission should codify its ISR policy. Prior certification on a country-by-country basis has been crucial to enforcing the Commission's equivalency policy, and accordingly formally codifying that policy would be entirely appropriate. Moreover, where the Commission has issued an initial ISR authorization to a carrier, that carrier should provide notification to the Commission of its intention to provide service to additional countries, even when the Commission has made an equivalency finding with respect to those countries. The Commission and other parties need to monitor whether U.S. carriers are participating on an ISR basis in foreign countries. The notification process provides a useful mechanism for conveying that information.

E. Other Forms of Market Entry

MCI agrees with the Commission's decision to reject AT&T's proposal to apply the entry policies adopted in this proceeding not merely to carriers holding international facilities-based Section 214 certificates but to all U.S. service providers,

---

16. Regulation of International Accounting Rates, 7 FCC Rcd 559, 562 (1991) (International Resale Policy).

domestic and international, and enhanced service providers. Id. at ¶¶ 80-83. There is no basis for the Commission to depart from its policy of not regulating enhanced services. Finally, as the Commission notes, foreign carriers proposing to enter the U.S. market on a facilities basis would be subject in any event to the effective market access standard, whether they use separate satellites, private submarine cables or traditional common carrier facilities. Id. at ¶ 83.

F. Modification of Dominant Carrier and Other Operating Safeguards

There is also no basis for the Commission to modify its nondiscrimination safeguards applicable to U.S. carriers regulated as dominant by virtue of their affiliation with a foreign carrier. MCI does not, however, support the Commission's proposal to streamline the tarriffing responsibilities of dominant foreign-affiliated carriers. Streamlined regulation would not provide the Commission adequate information or time to address any ratemaking concerns relative to a foreign carrier's U.S. affiliates rate levels, rate classifications and practices. But MCI does agree with the Commission's proposal to continue to require that a foreign-affiliated carrier obtain prior Commission approval before adding or discontinuing circuits on those routes where it is regulated as dominant and that it file quarterly traffic and revenue reports with regard to those routes. See NPRM at ¶ 85.

To be truly useful, the dominant carrier classification should provide the Commission with basic information concerning

the activities of foreign-affiliated carriers to enable the Commission to intercede promptly and remedy any anticompetitive concerns. The need for such timely information will exist even if the Commission adopts its proposed entry standard. Accordingly, there is no basis for changing the Commission's policies regarding the filing of circuit, traffic and revenue information, and prior certification. Id.

MCI also supports the Commission's proposal to require a dominant, foreign-affiliated carrier to "maintain complete records of the provisioning and maintenance of network facilities and services it procures from its foreign carrier affiliate." Id. at ¶ 86. These records -- which would be available to the Commission upon its request -- are essential to providing the information it needs to detect and deter discriminatory and anticompetitive conduct by a foreign carrier in favor of its U.S. affiliate. Id.

MCI further supports the Commission's proposal to require a U.S. carrier to obtain a written commitment from its foreign carrier affiliate "not to offer or provide, with respect to the provision of basic services, any special concessions to any joint venture for the provision of U.S. basic or enhanced services in which they both participate." Id. The Commission adopted a similar requirement in the MCI/BT Order.[17] The rationale for imposing the "no special concessions" requirement on MCI and BT

---

17. MCI/BT Order, 9 FCC Rcd at 3966-3970.

applies with equal force to all foreign carriers and their U.S. carrier affiliates.

The Commission also inquires whether it should expressly prohibit a foreign carrier or its U.S. carrier affiliate from refiling U.S. originating or terminating traffic without the consent of the originating or terminating countries. NPRM at ¶ 91. The Commission should prohibit such refiling practices which violate the Commission's International Settlements Policy, its proportionate return policy, and International Telecommunications Union Regulations. As MCI demonstrated in its pending Petition for Declaratory Ruling, such practices substantially worsen the U.S. settlements deficit and lead to higher rates for U.S. international telecommunications services.[18]

Finally, MCI supports the Commission's proposal to codify its proportionate return policy. MCI agrees that "all carriers, whether affiliated or not, must accept only their proportionate share of return traffic from foreign correspondents." NPRM at ¶ 91. The proportionate return policy is a cornerstone of the Commission's efforts to promote vigorous competition in international telecommunications because it prevents any carrier from gaining an unfair advantage over its competitors with respect to obtaining return traffic. In view of the prospect that foreign carriers increasingly will be entering the U.S.

---

18. See In the Matter of Sprint Communications Company, L.P., Reorigination of International Telecommunications Traffic, File No. ISP-95-004, filed January 27, 1995.

market and providing international facilities-based services, it is essential that the Commission codify that policy to prevent foreign carriers from discriminating in favor of their U.S. affiliates to the detriment of competitors with regard to return traffic.

III. THE EFFECTIVE MARKET ACCESS STANDARD SHOULD BE INCORPORATED IN THE COMMISSION'S PUBLIC INTEREST ANALYSIS UNDER SECTION 310(B)(4) OF THE ACT

The Commission inquires whether it should employ the effective market access standard in making public interest determinations under Section 310(b)(4) of the Act where the foreign ownership in a U.S. common carrier licensee would exceed the 25 percent statutory benchmark. Id. at ¶ 92. MCI supports the use of the effective market access standard in that context.[19] The need of foreign entities to obtain Commission approval under Section 310(b)(4) of the Act to invest in U.S. common carriers provides the Commission with a useful vehicle for encouraging foreign administrations to open their markets to competition. Id. at ¶¶ 94-95.

The Commission asks whether it should use the effective market access test when (1) an applicant, in whom foreign ownership in the holding company exceeds the 25 percent benchmark, seeks a common carrier license; or (2) when a U.S.

---

19. MCI takes no position on whether the Commission should use the effective market access standard in making public interest determinations under Section 310(b)(4) of the Act with respect to aeronautical radio and broadcast applications. See NPRM at ¶¶ 97-103.

licensee seeks to increase the level of foreign ownership in the parent holding company beyond the 25 percent benchmark or previously authorized levels of foreign ownership. Id. at ¶ 95. The Commission also inquires how it should apply the test. For instance, in considering a foreign entity's proposal to invest in the parent holding company of a Personal Communications Service (PCS) applicant, the Commission asks if it should make a finding whether U.S. companies can provide PCS or its functional equivalent in the foreign entity's primary markets. Id. at ¶ 96.

The Commission should employ the effective market access test under Section 310(b)(4) of the Act for the same reason that it should use that test in making the public interest entry decision required by Section 214 -- i.e., as leverage to encourage foreign administrations to open their markets to competition by U.S. carriers. Thus, in making the public interest finding required by Section 310(b)(4), the Commission should determine whether the foreign entity's primary markets satisfy the effective market access test.

The threshold issue the Commission must resolve is what level of new foreign entity investment in a U.S. carrier above the 25 percent statutory benchmark should trigger the use of the effective market access test. In applying the effective market access test to Section 214 applications, MCI recommends herein that when a consortium of two or more foreign carriers propose to invest in a U.S. carrier, the Commission consider each foreign interest of at least 5 percent, provided the proposed collective

foreign interests exceed 10 percent in the U.S. carrier. The Commission should follow the same approach with regard to Section 310 applications.

Accordingly, MCI proposes that, in considering an application pursuant to Section 310(b)(4) to exceed the 25 percent benchmark, the Commission should apply the effective market access test with regard to only those foreign entities that propose to acquire at least a 5 percent ownership interest in a U.S. carrier.[20] If the application indicates that a foreign entity proposes to acquire less than a 5 percent interest in the U.S. carrier, the Commission would apply the conventional public interest criteria under Section 310(b)(4) and would not invoke the effective market access test.

However, if the Commission applied the effective market access test, any finding that the test was satisfied should be limited to the specific service that is the subject of the Section 310 application. For instance, meeting the standard in the context of a foreign carrier's proposed investment in a U.S. PCS licensee, should not equate to a finding that the foreign entity has carte blanche to invest in a U.S. facilities-based international carrier, notwithstanding the closed nature of the foreign carrier's comparable markets. In order to achieve its objective of opening foreign markets, it is clear that the

---

20. Although the Commission arguably could apply the effective market access test to existing foreign entities which held at least a 5 percent interest in a U.S. carrier prior to the filing of a Section 310(b)(4) application, such retroactive use of the standard would present equitable concerns.

effective market access test must be applied on a service specific basis. See NPRM at ¶ 96.

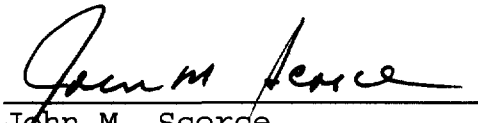
The Commission also asks whether, once it has made an effective market access determination, it should consider other public interest factors bearing on the entry issue and whether those factors should be defined with more precision than in the context of its analogous Section 214 application reviews. Id. at ¶ 96. The Commission clearly has discretion to consider other factors and MCI agrees that it could be useful to identify those factors with particularity and to refine that list for Section 310(b)(4) purposes.

IV. CONCLUSION

For the reasons stated above, the Commission should adopt the proposals set forth in its NPRM, modified as MCI recommends herein.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By 

John M. Scorce
Donald J. Elardo
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-2006
Its Attorneys

Dated: April 11, 1995

CERTIFICATE OF SERVICE

I, Girdie M. Kelly, hereby certify that a copy of the foregoing COMMENTS has been sent by United States first class mail, postage prepaid, unless otherwise noted, to the following parties on this 11th day of April 1995.

Scott Blake Harris*
Chief, International Bureau
Federal Communications
Commission
Room 800
2000 M Street, N.W.
Washington, D.C. 20554

ITS*
Federal COmmunications
Commission
1919 M Street, N.W.
Room 246
Washington, D.C. 20554

Diane Cornell*
Division Chief,
Telecommunications Division
Federal Communications
Commission
Room 800
Washington, D.C. 20554

Earl S. Barbely, Director
Office of International
Corporation
Communications Policy (EB/TD)
Department of State
Room 5824
Washington, D.C. 20520

Suzanne Settle
Senior Policy Advisor
NTIA
U.S. Department of Commerce
14th & Constitution Ave., N.W., Rm 4713
Washington, D.C. 20230

Girdie M. Kelly

Girdie M. Kelly

APRIL 11, 1995

*HAND DELIVERY